A

AHMAD IBRAHIM

v.

PP

B

COURT OF APPEAL, PUTRAJAYA
MOHAMED APANDI ALI JCA
AZAHAR MOHAMED JCA
LINTON ALBERT JCA
[CRIMINAL APPEAL NO: B-05-174-2009]

C

16 AUGUST 2012

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in 854.2 grams cannabis - Conviction - Appeal against decision - Appellant's knowledge of drugs in bag - Physical condition of*

D

bag - Whether appellant had opportunity to inspect contents in bag - Whether appellant an innocent carrier - Whether failure to call certain witness created gap in prosecution's case - Admission of irrelevant and inadmissible evidence - Whether there was substantial miscarriage of justice

E

CRIMINAL PROCEDURE: *Defence - Trafficking in dangerous drugs - Innocent carrier - Knowledge of drugs in bag - Physical condition of bag - Whether there was opportunity to inspect contents of bag - Whether demeanour, conduct and reaction upon being confronted by police taken into account - Whether appellant an innocent carrier - Evidence Act 1950,*

F

s. 8

CRIMINAL PROCEDURE: *Defence - Evidence - Wrongful admission of - Whether there was sufficient evidence to justify decision - Factors to consider - Admission of irrelevant and inadmissible evidence - Whether*

G

there was substantial miscarriage of justice

EVIDENCE: *Witness - Failure of prosecution to call witness - Trafficking in 854.2 grams cannabis - Whether created material gap in prosecution's case*

H

The accused ('appellant') was charged with trafficking in 854.2 grams of cannabis, an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act'). As a result of a surveillance conducted in front of a shophouse, C/Inspector

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Ahmad Tarhizi ('PW3') observed the appellant coming down the staircase of the said shop house and stood on the five foot way whilst holding something and behaving suspiciously. Upon being apprehended, PW3 seized from the appellant, the bag containing

slabs of dried plant materials which was later confirmed to be 854.2 grams of cannabis. The appellant's defence was that just before his arrest, one Iskandar, who was staying with him, had given the bag containing the slabs of cannabis to him and instructed him to hand it over to Iskandar's friend who was waiting downstairs. The appellant contended that he did not know what was in the package when he was arrested by the police. In his reasoning, the learned High Court judge stated that the appellant had ample opportunity to look into the bag before he made or continued to descend down the staircase but he chose not to do so. Upon failing to raise a reasonable doubt on the prosecution's case nor rebutting the presumption of trafficking, the appellant was convicted and sentenced to death. Hence this appeal. Among the grounds for appeal raised by the appellant were: (i) the prosecution's failure to call Iskandar as a witness; (ii) the failure of the learned High Court judge to appreciate the evidence that the appellant was an innocent carrier; and (iii) the admission of irrelevant and inadmissible evidence against the appellant.

Held (dismissing appeal; affirming conviction and sentence) Per Azahar Mohamed JCA delivering the judgment of the court:

(1) This court could not agree that the failure to call Iskandar had created a material gap in the prosecution's case. After arresting the appellant, PW3 arrested Iskandar and at that point of time, the appellant had the opportunity to inform PW3 that it was Iskandar who had asked him to deliver the bag, but he chose not to do so. If indeed it was Iskandar who had asked the appellant to deliver the bag, the appellant would have informed this important fact to PW3 at that material time. Hence, the appellant's failure to provide relevant information about the involvement of Iskandar for the police to carry out a thorough investigation into the probability of his defence had entitled the High Court judge to disbelieve the appellant. (para 8)

(2) A defence of innocent carrier refers to a state of affairs where an accused person acknowledges carrying, for example a bag, containing the dangerous drugs but disputes having knowledge of the drugs. In this case, the physical condition of the bag showed that it could be easily opened in order to discover its contents and that the cannabis was wrapped in a transparent plastic. The appellant could have easily opened the bag to

check its contents. Further, the demeanour, conduct and reaction of the appellant upon being confronted by the police were clearly admissible under s. 8 of the Evidence Act 1950 in illustrating that the appellant had knowledge of the offending drug at the material time. (paras 10 & 11)

(3) The test to determine whether or not the judgment of a court should be reversed or altered on account of the wrongful admission of evidence was whether or not without that evidence there was sufficient evidence to justify the decision. Applying the principles in the case of *Juraimi Husin v. PP*, this court took the view that the admission of irrelevant and inadmissible evidence had not occasioned a substantial miscarriage of justice to the appellant. The totality of the evidence, the surrounding circumstances and the conduct of the appellant when taken together had irresistibly pointed to the appellant having knowledge of the cannabis in the bag at the material time. (para 14)

(4) Although the benefit of every reasonable doubt must be given to the appellant and cannot be withheld from him, this court must not entertain it on grounds which were fanciful or in the nature of speculation. A reasonable doubt is not a doubt based upon sympathy or prejudice. The existence of reasonable doubt is dependent upon the totality of the evidence and on an examination of all the evidence in a fair and reasonable manner. On the facts herein, there was no reasonable doubt which existed as to the appellant's guilt of the offence with which he was charged. (para 14)

Bahasa Malaysia *Translation Of Headnotes*

Tertuduh ('perayu') telah dituduh mengedar 854.2 gram kanabis, suatu kesalahan di bawah s. 39(B)(1)(a) Akta Dadah Berbahaya 1952 ('Akta'). Berikutan suatu pemantauan yang dijalankan di hadapan sebuah rumah kedai, K/Inspektor Ahmad Tarhizi ('PW3') telah memerhatikan perayu turun daripada tangga rumah kedai tersebut lalu berdiri di kaki lima sambil memegang sesuatu dan berkelakuan mencurigakan. Apabila ditangkap, PW3 merampas daripada perayu beg tersebut yang mengandungi bahan ketulan tumbuhan kering yang kemudiannya disahkan sebagai kanabis. Rayuan perayu adalah bahawa sebelum penangkapannya, seorang Iskandar yang tinggal bersamanya, telah memberikannya beg yang mengandungi ketulan kanabis tersebut kepada perayu dan mengarahkannya untuk menyerahkannya kepada kawan Iskandar

yang sedang menunggu di bawah. Perayu menghujahkan bahawa dia tidak mengetahui apa yang terdapat di dalam bungkusan tersebut ketika ditangkap oleh polis. Dalam dapatannya, yang arif hakim Mahkamah Tinggi menyatakan bahawa perayu mempunyai peluang secukupnya untuk melihat ke dalam beg tersebut sebelum atau semasa menurun tangga tetapi dia tidak berbuat sedemikian. Disebabkan kegagalannya membangkitkan keraguan munasabah terhadap kes pendakwaan atau pun mematahkan anggapan pengedaran, perayu telah disabit dan dihukum mati. Antara alasan rayuan yang dibangkitkan oleh perayu adalah: (i) kegagalan pendakwaan untuk memanggil Iskandar sebagai saksi; (ii) Kegagalan Hakim Mahkamah Tinggi untuk mempertimbangkan keterangan bahawa perayu adalah pembawa tidak berdosa; dan (iii) penerimaan keterangan tidak relevan dan tidak boleh diterima terhadap perayu.

Diputuskan (menolak rayuan; mengesahkan sabitan dan hukuman mati)
Oleh Azahar Mohamed HMR menyampaikan penghakiman mahkamah:

(1) Mahkamah ini tidak bersetuju bahawa kegagalan memanggil Iskandar telah mewujudkan jurang material kepada kes pendakwaan. Selepas menangkap perayu, PW3 telah menangkap Iskandar dan ketika itu, perayu berpeluang untuk memaklumkan PW3 bahawa Iskandar yang telah menyuruhnya menghantar beg itu, tetapi dia memilih untuk tidak berbuat sedemikian. Walaupun Iskandar yang telah menyuruh perayu untuk menghantar beg tersebut, perayu sepatutnya memberitahu fakta penting ini kepada PW3 pada masa material tersebut. Oleh itu, kegagalan perayu untuk membekalkan maklumat relevan berkenaan penglibatan Iskandar supaya polis dapat menjalankan siasatan terperinci terhadap pembelaannya telah membawa kepada ketidakpercayaan hakim Mahkamah Tinggi terhadap perayu.

(2) Pembelaan pembawa tidak berdosa merujuk kepada hal keadaan di mana seseorang tertuduh mengaku membawa, contohnya beg, yang mengandungi dadah berbahaya tetapi mempertikaikan pengetahuannya tentang dadah itu. Dalam kes ini, keadaan fizikal beg menunjukkan bahawa ianya boleh dibuka dengan senang untuk mengetahui kandungannya dan bahawa kanabis dibalut dengan plastik lutsinar. Perayu sememangnya boleh membuka beg tersebut dengan senang

untuk memeriksa kandungannya. Tambahan lagi, gerak geri, kelakuan dan reaksi perayu apabila dihadapi oleh polis boleh diterima di bawah s. 8 Akta Keterangan 1950 dalam menjelaskan bahawa perayu mempunyai pengetahuan mengenai dadah tersebut pada masa material.

(3) Ujian untuk memastikan sama ada penghakiman mahkamah mesti diakas atau diubah atas alasan terdapat kesalahan dalam penerimaan-masuk keterangan adalah sama ada atau tidak keterangan tersebut cukup untuk menjustifikasikan keputusan tersebut. Menggunapakai prinsip dalam kes *Juraimi Husin v. PP*, mahkamah ini berpandangan bahawa penerimaan-masuk keterangan tidak relevan dan tidak boleh diterima tidak menyebabkan ketidakadilan kepada perayu. Keseluruhan keterangan, hal keadaan persekitaran dan kelakuan perayu apabila diambil bersama telah menunjukkan bahawa perayu mempunyai pengetahuan berkenaan kanabis yang berada di dalam beg pada masa material tersebut.

(4) Walaupun manfaat bagi setiap keraguan munasabah harus diberi kepada perayu dan tidak boleh dihalang daripadanya, mahkamah ini tidak boleh melayannya atas alasan-alasan yang bersifat khayalan atau spekulasi. Keraguan munasabah bukanlah suatu keraguan yang berdasarkan simpati atau prejudis. Kewujudan keraguan munasabah bergantung kepada keseluruhan keterangan atas pemeriksaan kesemua keterangan secara adil dan munasabah. Berdasarkan fakta, tiada keraguan munasabah wujud terhadap kebersalahan perayu atas kesalahan yang dituduh terhadapnya.

Case(s) referred to:

Gunalan Ramachandran & Ors v. PP [2004] 4 CLJ 551 CA ***(refd)***
Juraimi Husin v. PP [1998] 2 CLJ 383 CA ***(foll)***
Namasiyiam Doraisamy v. PP & Other Cases [1987] 1 CLJ 540; [1987] CLJ (Rep) 241 SC ***(refd)***
Parlan Dadeh v. PP [2009] 1 CLJ 717 FC ***(refd)***
PP v. Abdul Rahman Akif [2007] 4 CLJ 337 FC ***(refd)***
Seneviratne v. R [1936] 3 All ER 36 ***(refd)***
Su Ah Ping v. PP [1979] 1 LNS 100 FC ***(refd)***
Teng Howe Sing v. PP [2009] 3 CLJ 733 FC ***(refd)***
Warner v. Metropolitan Police Commissioner [1968] 2 All ER ***(refd)***
Wong Kok Keong v. Regina [1954] 1 LNS 125 HC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 60(1)
Dangerous Drugs Act 1952, ss. 2, 5, 37(da)(vi), 39B(1)(a), (2)
Evidence Act 1950, ss. 8, 167

For the appellant - S Selvi; M/s Gooi & Azura
For the respondent - Siti Rafidah Zainuddin DPP

[Appeal from High Court, Shah Alam; Criminal Trial No: 45-106-2005]

Reported by Kumitha Abd Majid

JUDGMENT

Azahar Mohamed JCA:

[1] Ahmad bin Ibrahim ("the appellant"), an Indonesian national was charged with trafficking in 854.2 grams of cannabis, an offence under s. 39B(1)(a) of the Dangerous Drugs Act ("the Act") and punishable under s. 39B(2) of the same Act. The charge reads:

> Bahawa kamu pada 9 Februari 2005 jam lebih kurang 8.00 malam di hadapan rumah kedai, Batu 7 1/2 Jalan Bukit Kemuning, di dalam Negeri Selangor Darul Ehsan, telah memperedarkan dadah berbahaya cannabis seberat 854.2 gram, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya dan boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

[2] On 31 July 2009 the High Court at Shah Alam found him guilty of the offence. He was convicted and sentenced to the mandatory death penalty prescribed by the Act. He then appealed to this court against that decision. We dismissed his appeal. We now give our reasons for so deciding.

[3] The essential facts as found by the learned High Court judge are these. At about 7.40pm on 9 February 2005, C/Inspector Ahmad Tarhizi bin Omar ("PW3") laid an ambush in front of a shophouse at the 7 1/2 milestone Bukit Kemuning in the Klang District, Selangor together with ten other policemen. PW3 divided his men into groups. His group comprised himself and four other policemen. They stationed themselves and conducted surveillance in front of the shop house. At about 8pm, PW3 observed a person (later identified as the appellant) coming down the staircase of the shop house. The appellant was alone. The appellant then stood on the five foot way. PW3 saw the appellant holding something in his right hand and was behaving in a suspicious manner. PW3 and his policemen then approached the appellant. He introduced himself as policeman. At that point of

A time, the appellant attempted to flee. PW3 and his men succeeded in apprehending the appellant who was still holding a bag in his right hand. PW3 seized the bag from the appellant's right hand, which was a yellow coloured plastic bag bearing the printed words "THE GRAND SALE". PW3 opened the bag and saw a slab of
B dried plant material which he suspected to be cannabis. The slab was wrapped in transparent plastic and tied with a string. PW3 then conducted a body search on the appellant and found a bunch of keys in the appellant's right trouser pocket. Upon questioning, the appellant told PW3 that he lived on the first floor
C of the shophouse. The appellant then led PW3 upstairs to the first floor of the shophouse where PW3 made several arrests. The appellant and the bag containing the slab of dried plant material were then taken to the police station. Subsequently the dried plant material was sent to the Chemistry Department for analysis
D and the material was confirmed by the chemist, Puan Maimonah binti Sulaiman ("PW1") to be cannabis as defined in s. 2 of the Act, weighing 854.28 grams.

[4] At the end of the prosecution's case, on the basis of the
E primary evidence adduced by the prosecution which we have summarised above, the learned High Court judge made a finding that the appellant was in possession of the bag at the time of his arrest and that the appellant knew that it contained cannabis. Since the amount of the cannabis in the possession of the
F appellant was in excess of 200 grams, the learned High Court judge invoked the presumption under 37(da)(vi) of the Act. The appellant was presumed to be trafficking in the cannabis unless he was able to prove to the contrary on the balance of probabilities. For that reason, the learned High Court judge held that a *prima*
G *facie* case had been made out against the appellant in respect of the offence charged. She then called upon the appellant to enter his defence.

[5] The appellant elected to evidence on oath. In essence, the
H appellant said that he was an innocent carrier of the bag containing the cannabis for one Iskandar to whom the cannabis actually belonged and that he had only momentary custody and control of the bag without knowledge that the bag contained cannabis. According to the appellant he had entered Malaysia
I about one week before he was arrested by the police and was staying with one Mohd Dahlan and others on the first floor of the shop house. It is his evidence that one of the persons who had stayed with him was one Iskandar. It was his defence that just

before his arrest, it was Iskandar who had given the bag containing the slab of cannabis to him with the express instruction to hand it over to Iskandar's friend who was waiting downstairs and that he had complied with Iskandar's instruction by taking the bag from Iskandar without knowing the nature of the contents of the bag. The appellant maintained that that he did not know what was in the package when he was arrested by the police.

[6] At the conclusion of the whole case, the learned High Court judge found that the appellant's defence had not raised a reasonable doubt on the prosecution's case, and neither had the appellant rebutted the presumption of trafficking on a balance of probabilities. As we have indicated earlier, the appellant was accordingly convicted of the offence charged and sentenced accordingly by the learned High Court judge.

[7] When this appeal came before us, learned counsel for the appellant had raised four grounds. We shall deal with each of them in turn.

[8] The first relates to the failure by the prosecution to call Iskandar. Learned counsel submitted that the evidence of Iskandar is necessary to the unfolding of the prosecution's case bearing in mind that he was immediately arrested at the shop house after the arrest of the appellant and was subsequently charged for trafficking in cannabis. It was contended that the failure to call Iskandar had created a material gap in the prosecution's case. We do not agree. It is true that Iskandar was also charged under s. 39B of the Act in respect of cannabis weighing 230 grams. However, an important point to emphasize here is that, as explained by the Investigating Officer, C/Inspector Mohamad Salim bin Gulam Muhammad ("PW6"), the 230 grams of cannabis was seized from Iskandar when the police arrested him at the shophouse. In this regard, it is relevant to note that after arresting the appellant, PW3 went up to the first floor together with the appellant and arrested Iskandar and two others who were staying there at the time in question. At that point in time, the appellant had the opportunity to inform PW3 that it was Iskandar who had asked him to deliver the bag. But the appellant chose not to do so. In the circumstances of this case, the appellant's failure to provide relevant information about the involvement of Iskandar for the police to carry out a thorough investigation into the probability of his defence, entitled the High Court judge to disbelieve the appellant (see: *Teng Howe Sing v. PP* [2009] 3 CLJ 733). It is justifiable for the court to examine the contemporaneous act or

omission and the prevailing circumstances under which the appellant said or failed to say. If indeed that it was Iskandar who had asked him to deliver the bag he would in all probability would inform this important fact to PW3 at the material time. Viewed in this way the evidence of Iskandar is not necessary to the unfolding of the prosecution's case (see: *Seneviratne v. R* [1936] 3 All ER 36). Furthermore, an adverse inference for not calling a witness cannot be drawn if there is sufficient other evidence to support the prosecution's case (see: *Namasiyiam Doraisamy v. PP & Other Cases* [1987] 1 CLJ 540; [1987] CLJ (Rep) 241). In the circumstances, it was our judgment that the failure by the prosecution to call Iskandar is not fatal to its case as his evidence is not necessary to unfold the narrative upon which the prosecution case is based.

[9] We turn next to the second ground raised by learned counsel for the appellant. That is, the possibility of mix up between the slab of cannabis which PW3 had recovered from the appellant and the slab of cannabis which PW3 had recovered from Iskandar. We were unable to agree with this submission. The same arguments were in point of fact canvassed before the learned High Court judge. She rejected the arguments and accepted the explanation by the prosecution's witnesses to the effect that there could not have been a mix up between the slab of cannabis which PW3 had recovered from the appellant and the slab of cannabis which PW3 had recovered from Iskandar. But more importantly, the question which arose for decision was whether the cannabis recovered by PW3 from the appellant was the same cannabis sent to and examined by PW1 and subsequently produced in court as evidence. In considering this issue, we had closely scrutinised the entire evidence contained in the appeal record. We have no doubt at all that the cannabis tendered in court which form the subject matter in respect of the offence charged against the appellant was the one actually seized from the appellant. PW3 confirmed and identified in court the relevant exhibits and cannabis which were seized from the appellant's possession. PW3 handed over all the same exhibits to PW6 on the same day. The evidence of the PW1 had clearly established that the cannabis which PW6 handed to her for analysis was the very cannabis he wrapped up after analysis, and then returned it to PW6. PW1 also identified in court the exhibits and the cannabis in question. Clearly, there was no break in the chain of evidence regarding the exhibits in the present case (see: *Gunalan Ramachandran & Ors v. PP* [2004] 4 CLJ 551 and *Su Ah Ping v. PP* [1979] 1 LNS 100).

[10] Turning now to the third ground, it was argued by learned counsel that the learned High Court judge had failed to appreciate the evidence given by the appellant that he was an innocent carrier of the bag containing the cannabis for Iskandar and that the appellant had only momentary custody and control of the bag without knowledge that the bag contained cannabis. According to the appellant, there was a lack of judicial appreciation of the defence of the appellant. A defence of innocent carrier refers to a state of affairs where an accused person acknowledges carrying, for example a bag, as in the case before us, containing the dangerous drugs but disputes having knowledge of the drugs. Whether it will succeed or not would very much depend on the facts of each case. In considering this ground, we had scrutinized with care the judgment of the learned High Court judge. The learned High Court judge had expressly referred to the defence and had carefully considered it. This is what the learned judge said in his judgment:

> The proven facts showed that the accused had descended the staircase of the first floor and was standing on the five foot way with the bag in his right hand. Even assuming for a moment that it was true that Iskandar had given him the bag, he had willingly taken custody of the bag and he was in control of the bag at the material time. He also had ample opportunity to look into the bag before he made or continued his descent down the staircase. He chose not to do that. From his suspicious and guilty conduct and his failure to rebut the inference that was made by the court of his guilty knowledge of the cannabis inside the bag the court was satisfied beyond a reasonable doubt that he had *mens rea* possession of the cannabis.

[11] As noted by the learned High Court judge in her judgment (see p. 115 jilid 2 of the appeal record) the physical condition of the bag the appellant was holding in his right hand showed that it could be easily opened in order to discover its contents and that the cannabis, which is the subject matter in respect of the offence charged was wrapped in transparent plastic. The appellant could have easily opened the bag to check its contents. A person who on purpose shut his eyes to the obvious for the reason that he did not want to know would be taken to have the necessary knowledge. The learned High Court judge had judicially appreciated and considered the defence of innocent carrier. On consideration of the evidence in the appeal record of the present case, in our judgment, the learned High Court judge was entitled and correct in rejecting the innocent carrier defence. Moreover, in our judgment, the appellant's demeanour and conduct at the

material time would show that he was aware of the cannabis in his possession. The demeanour and the conduct as well as the reaction of the appellant upon being confronted by the police were clearly admissible under s. 8 of the Evidence Act 1950 on the issue whether the appellant having knowledge of the offending drug at the material time (see: *Parlan Dadeh v. PP* [2009] 1 CLJ 717). Evidently, the appellant was behaving suspiciously before he was arrested and tried to run away when PW3 identified himself to the accused as a police officer. In this connection, the learned High Court judge had considered and rejected the explanation of the appellant that he had struggled with PW3 because he was afraid as he did not possess a valid passport and that he had just entered the country a week before he was arrested. Since this issue involved the credibility of the appellant, the learned High Court judge was as a matter of fact a better person either to accept or reject his explanation. It is not the function of this court to substitute its findings for that of the learned High Court judge. In any event, we found no plausible reason at all to disturb her findings.

[12] This brings us to the fourth and the last ground. Learned counsel had argued that the appellant was not charged in respect of self administration of drugs to himself under s. 5 of the Act. It was argued that the learned High Court judge admitted irrelevant and inadmissible evidence which is highly prejudicial to the appellant. The learned High Court judge admitted evidence from Puan Noriha binti Sanusi ("PW5"), the science officer that the appellant's urine test was tested positive for 11 – nor delta – 9 – tetrahydrocannabinol – 9 – carboxylic acid, a type of molecule which is always present in the urine a person who has taken *ganja*. Learned counsel further argued that the learned High Court judge relied on the said prejudicial evidence and convicted the appellant. It is true that in her judgment, the learned High Court judge made reference to the evidence concerning the presence of a type of cannabis molecule in the appellant's urine. Nevertheless, in her judgment she also concluded that if this evidence is completely disregarded, she found that "the accused had failed to rebut the other independent evidence from which the court had inferred knowledge on his part concerning the cannabis inside the bag. The accused could have easily opened the bag to check its contents. Had he done that he could have easily seen that it was a slab of cannabis as it was wrapped in transparent plastic." This brings into focus the question whether there was occasioned any substantial miscarriage of justice to the appellant by reason of the

admission of irrelevant and inadmissible evidence. In this regard, the proviso to s. 60(1) of the Courts of Judicature Act 1964 makes clear the powers of Court of Appeal as follows:

> Provided that the Court of Appeal may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

[13] Even more to the point is s. 167 of the Evidence Act 1950 which works in tandem with the proviso to s. 60. It provides:

> The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case if it appears to the court before which the objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

[14] The test to determine whether or not the judgment of a court should be reversed or altered on account of the wrongful admission of evidence is whether or not without that evidence there was sufficient evidence to justify the decision (see: *Wong Kok Keong v. Regina* [1954] 1 LNS 125). The case of *Juraimi Husin v. PP* [1998] 2 CLJ 383 established the principle that if in a criminal appeal an appellant has demonstrated errors in point of evidence or procedure it is the duty of this court to determine whether, despite the error or errors in question, there exists a reasonable doubt in its mind as to the guilt of the accused, based upon the admissible evidence on the record. If the error or errors complained of do not have this effect, then it is the duty of this court to plainly say so and maintain the conviction. Applying the same foregoing principles as laid down by the case of *Juraimi Husin v. PP (supra)*, we took the view that the admission of irrelevant and inadmissible evidence in the case at hand has not occasioned a substantial miscarriage of justice to the appellant. Apart from the fact that the learned High Court judge had critically appraised the issue whether the appellant had the prerequisite knowledge about the cannabis found inside the beg, we had ourselves carefully scrutinised the whole of the evidence in the appeal record in the light of the criticisms addressed by learned counsel for the appellant. In the present case, it is not in dispute that the appellant was carrying the bag at the material time. Since the appellant was in physical control of the bag there is a strong inference that the appellant knew all along that the bag

found on his possession contained the offending cannabis. What is more, the bag could be easily opened in order to discover its contents. Therefore, it calls for an explanation by the appellant in order to rebut the said strong inference (see: *Warner v. Metropolitan Police Commissioner* [1968] 2 All ER at p. 394 and *PP v. Abdul Rahman Akif* [2007] 4 CLJ 337). In our judgment, the appellant's demeanour and conduct when confronted by PW3 at the time in question were reactions driven by guilt. The totality of the evidence, the surrounding circumstances and the conduct of the appellant when taken together irresistibly point to the appellant having knowledge of the cannabis in the bag at the material time. In our judgment, the appellant's story was incapable of raising a reasonable doubt on the prosecution's case. The existence or otherwise of reasonable doubt, in the final analysis would have to depend upon the facts of each case, regard being had to the common course of natural events and human conduct and experience. Although the benefit of every reasonable doubt must be given to the appellant and cannot be withheld from him, this court must not entertain it on grounds which are fanciful or in the nature of speculation. A reasonable doubt is not a doubt based upon sympathy or prejudice. Reasonable doubt is a doubt arising from the evidence adduced or doubt which arise for reasons of lack of evidence. The existence of reasonable doubt is dependent upon the totality of the evidence and on an examination of all the evidence in a fair and reasonable manner and not in isolation. It is not required that the prosecution proves guilt beyond all possible doubt. The test is one of reasonable doubt. After taking into consideration all the complaints advanced on behalf of the appellant, it is our judgment that no reasonable doubt exists as to guilt of the appellant of the offence with which he was charged. The decision of the learned High Court judge was neither perverse nor against the weight of evidence. We were wholly convinced that at the material time and place, the appellant knew that he was carrying cannabis and that he was not an innocent carrier.

[15] We had, therefore, dismissed the appeal. We affirmed the conviction and the sentence of death imposed by the learned High Court judge upon the appellant.